

APPEAL NO. 030675
FILED APRIL 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 18, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury, in the form of bilateral carpal tunnel syndrome (BCTS), with a date of injury of _____, and that the claimant had disability from May 18 through November 22, 2002. The appellant (carrier) appeals and argues that the hearing officer "committed harmful error" in excluding one of its exhibits. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The carrier asserts that the hearing officer erred in excluding Carrier's Exhibit No. 2, a peer review report, which the hearing officer excluded on the basis that the carrier had not exercised due diligence in obtaining the report, had not exchanged it as soon as possible after it became available, and, consequently, had not shown good cause for the lack of timely exchange. The carrier argues that a showing of good cause was not required in this case "because the exchange was not late as defined by [Section 410.161]." The carrier goes on to argue that the "good cause excuse is demanded under [Section] 410.161, only where information in a party's possession is not exchanged timely, or under [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(3) (Rule 142.13(c)(3))], where it is not exchanged until the [hearing]."

Section 410.160 provides that the parties shall exchange all medical reports, expert witness reports, medical records, and witness statements within the time prescribed by Texas Workers' Compensation Commission rule. Section 410.161 provides that a party who fails to disclose such information or documents at the time disclosure is required may not introduce the evidence at any subsequent proceeding unless good cause is shown for not having timely disclosed the information or documents. Rule 142.13(c) provides that the parties shall exchange with each other medical reports and records, witness statements, and other documents intended to be offered into evidence no later than 15 days after the benefit review conference. Given that the carrier did not exchange the report within the time period prescribed by Rule 142.13(c), we cannot agree that the carrier was not required to make a showing of good cause in order to obtain its admission or that the hearing officer abused his discretion in finding that no good cause had been established for failing to timely exchange the report.

Whether the claimant sustained a compensable occupational disease injury and whether he had disability were factual questions for the hearing officer to resolve. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of

the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Nothing in our review of the record indicates that the hearing officer's decision requires reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge